



Docket No.: 5000-0128PUS1
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Bernd MÜLLER et al.

Application No.: 10/541,386

Confirmation No.: 6302

Filed: July 1, 2005

Art Unit: N/A

For: PYRIMIDINES, METHODS FOR THE
PRODUCTION THEREOF, AND USE
THEREOF

Examiner: Not Yet Assigned

LETTER

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Subsequent to the filing of the above-identified application on July 1, 2005, attached hereto is an English translation of the International Preliminary Examination Report (Form PCT/IPEA/409) that should be made of record in the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or to credit any overpayment to Deposit Account No. 02-2448 for any

Application No.: 10/541,386

Docket No.: 5000-0128PUS1

additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Dated: AUG 1 2006

Respectfully submitted,

By 

Andrew D. Meikle

Registration No.: 32,868

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Road

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant

Attachment(s)

Translation

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 0000054269	FOR FURTHER ACTION	See Form PCT/IPEA/416
International application No. PCT/EP2004/000708	International filing date (day/month/year) 28.01.2004	Priority date (day/month/year) 06.02.2003
International Patent Classification (IPC) or national classification and IPC C07D 521/00, 239/56, 403/04, A01N 43/54, 43/56, 43/90		
Applicant BASF AKTIENGESELLSCHAFT		

1.	This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.	
2.	This REPORT consists of a total of <u>4</u> sheets, including this cover sheet.	
3.	This report is also accompanied by ANNEXES, comprising: a. <input checked="" type="checkbox"/> (sent to the applicant and to the International Bureau) a total of _____ sheets, as follows: <input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions). <input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box. b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).	
4.	This report contains indications relating to the following items: <input checked="" type="checkbox"/> Box No. I Basis of the report <input type="checkbox"/> Box No. II Priority <input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability <input type="checkbox"/> Box No. IV Lack of unity of invention <input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement <input type="checkbox"/> Box No. VI Certain documents cited <input type="checkbox"/> Box No. VII Certain defects in the international application <input type="checkbox"/> Box No. VIII Certain observations on the international application	

Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/	Authorized officer
Facsimile No.	Telephone No.

Box No. I

Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language _____ which is the language of a translation furnished for the purposes of:
- ☐ international search (Rule 12.3 and 23.1(b))
- ☐ publication of the international application (Rule 12.4)
- ☐ international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the elements of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:
- ☐ the international application as originally filed/furnished
- ☒ the description:
- pages 1-67 _____ as originally filed/furnished
- pages* _____ received by this Authority on _____
- pages* _____ received by this Authority on _____
- ☒ the claims:
- nos. _____ as originally filed/furnished
- nos.* _____ as amended (together with any statement) under Article 19
- nos.* 1-10 _____ received by this Authority on 28.07.2004 with letter
- nos.* _____ received by this Authority on of 27.07.2004
- ☐ the drawings:
- sheets _____ as originally filed/furnished
- sheets* _____ received by this Authority on _____
- sheets* _____ received by this Authority on _____
- ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (specify): _____
- ☐ any table(s) related to sequence listing (specify): _____
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (specify): _____
- ☐ any table(s) related to sequence listing (specify): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/EP2004/000708

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	1-10	YES
	Claims		NO
Inventive step (IS)	Claims		YES
	Claims	1-10	NO
Industrial applicability (IA)	Claims	1-10	YES
	Claims		NO

2. Citations and explanations (Rule 70.7)

Reference is made to the following documents:

D5: EP-A-0 293 743 (BASF AG) 7 December 1988 (1988-12-07)

D7: WO02/074753 A (RHEINHEIMER JOACHIM; BASF AG (DE); GEWEHR MARKUS (DE); LORENZ GISELA) 26 September 2002 (2002-09-26)

1. Novelty

The compounds as per the present claims are not disclosed in the prior art. The subject matter of claims 1-10 is therefore novel (PCT Article 33(2)).

2. Inventive step

The present application does not meet the requirements of PCT Article 33(1) because the subject matter of claims 1-10 does not involve an inventive step for the following reasons:

D5 discloses fungicides (see table 2 and claim 4) which differ from the subject matter of the present claim 1 in that the pyrimidine ring is not substituted by 5-phenyl,

Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

but for example by 5-alkyl.

D7, however, describes pyrimidines with a fungicidal effect that are substituted in the 5 position by trifluoro-phenyl (see table 1 and claims 1, 9, 10), as in the claimed compounds.

A person skilled in the art would therefore combine the features disclosed in D5 and D7 with one another, without thereby being inventive, so as to solve the problem of providing further fungicides.

For this reason, the solution proposed in independent claim 1 cannot be considered inventive (PCT Article 33(3)).

The applicant's attention is drawn, in addition, to the fact that examples I-13, I-23, I-24 and I-37 are not covered by the general formula I of claim 1, since R1 is defined as C1-C10 alkyl, but the above-mentioned examples comprise substituted alkyl groups as R1. This also applies to the definitions given in table A, if R1 means A-27 to A-41, A50, A-107 and A-138.

3. Industrial applicability

The compounds claimed in the present application are suitable for use as pesticides and therefore the subject matter of claims 1-10 is considered industrially applicable (PCT Article 33(4)).